

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS,
SAN ANTONIO DIVISION**

MIKE LARSEN COMPANY

Plaintiff

v.

CUETO CONSULTING &
CONSTRUCTION, LLC and AEGIS
SECURITY INSURANCE COMPANY

Defendant

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Civil Action No. 5:20-cv-00128

MIKE LARSEN COMPANY'S ORIGINAL COMPLAINT

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES, United States of America for the Use of Mike Larsen Company, complaining of Cueto Consulting & Construction, LLC and Aegis Security Insurance Company (referred to collectively as "Defendants").

**I.
PARTIES**

1.1 Plaintiff, Mike Larsen Company ("**Larsen**"), is a Texas company that conducts business throughout the State of Texas.

1.2 Defendant, Cueto Consulting & Construction, LLC ("**C3**"), is a Texas limited liability company with its principal place of business in Temple, Texas and may be served with process by serving its Registered Agent for Service of Process:

**Andrew J. Cueto
900 Larkspur Lane
Fort Worth, Texas 76112**

or by serving any member, director or corporate officer of C3 (wherever he or she may be found) or the Secretary of the State of Texas.

1.3 Defendant, Aegis Security Insurance Company (“**Aegis**”), is a Pennsylvania insurance company authorized to do business within the State of Texas. Aegis may be served with process by serving its Registered Agent for Service of Process:

**P.O. Box 3153
Harrisburg, Pennsylvania 17105**

or by serving any corporate officer of Aegis (wherever he or she may be found), or by serving the Texas Department of Insurance.

II. JURISDICTION

2.1 This Court has exclusive jurisdiction pursuant to 40 U.S.C. 3133 ("Miller Act") as this suit is based upon a claim for materials and labor supplied to a prime contractor for the construction, alteration, or repair of a public building or public work for or on the property of the United States. The Court has supplemental jurisdiction pursuant to 28 U.S.C. Section 1367(a) as to Larsen's state law cause of action against C3 for the breach of contract which forms the same "case or controversy" as the Miller Act claim that provides this court original jurisdiction.

III. CAUSE OF ACTION BASED ON MILLER ACT

3.1 Pursuant to 40 U.S.C. § 3133, commonly known as the Miller Act, before any contract exceeding \$100,000.00 in amount for the construction, alteration or repair of any public building or public work for or on the property of the United States is awarded to any person, such person shall furnish a payment bond for the protection of all persons supplying labor and material in the

prosecution of the work provided in said contract for the benefit and use of the persons so supplying labor and material.

3.2 The U.S. Army Engineer & Support Center awarded a construction contract to C3 for the repair and/or renovation of the Combat Pistol Qualification Course Range 9 and Rappel Tower at Camp Bullis, Texas (the “Project”) pursuant to Contract W912DY-18-C-0060 (the “Contract”). The C3 Contract was in excess of \$100,000.00.

3.3 Larsen was a subcontractor to C3. C3 awarded a subcontract to Larsen for a portion of the Contract described in paragraph 3.2 above (the “Subcontract”). C3 entered into the Subcontract with Larsen for the labor, materials and equipment for the demolition of certain existing range components and installation of new target berms and MP barricades and walkways as part of the scope of work per project documents to be used in the performance of the prime contract. The total owing for the labor and materials supplied by Larsen to C3 is \$340,415.64.

3.4 C3, as principal and Aegis, as surety, furnished a payment and performance bond for the Project—Bond #B10 033 867 (the “Bond”). Larsen provided certain labor and materials for the Project to C3, as set out above.

3.5 As required by the Miller Act, C3, as principal, and Aegis, as surety, executed this Payment Bond for the use and benefit of all persons supplying labor and material in the prosecution of the work provided in the prime Contract and the Larsen Subcontract. Larsen supplied labor and material in the prosecution of the work provided in the Contract and, therefore, is a beneficiary of the Bond.

3.6 Demand for payment has been made on C3 and Aegis, but payment has not been made, resulting in damage to Larsen. Defendants are jointly and severally liable to Larsen for all claims asserted herein. Notice of such claim and demand for payment was provided by Larsen to Defendants on September 24, 2019.

3.7 Larsen is also entitled to statutory prejudgment and post-judgment interest against Defendants, jointly and severally, as may be allowed by law. Larsen is further entitled to reasonable attorneys' fees and costs against Defendants, jointly and severally, as may be allowed by contract or by law.

IV.

CAUSE OF ACTION BASED ON BREACH OF CONTRACT

4.1 C3 contracted with the U.S. Army Engineer & Support Center for the construction, alteration, or repairs of the Project.

4.2 C3, as principal and Aegis, as surety, furnished a payment and performance bond to the Owner, as obligee for the Project. Larsen provided certain labor and materials for the Project to C3 pursuant to a Subcontract, as set forth above.

4.3 Larsen would show it is unpaid for the above-referenced work in the sum of \$340,415.64. All conditions precedent for full payment of said sum have occurred or been performed. However, C3 has failed to pay such sums, which remains due.

4.4 Larsen has presented its claim to C3 and has demanded payment thereof, and although more than thirty days have passed since the demand was made, C3 has not paid it. Larsen is represented by the undersigned attorneys and

is, therefore, entitled to reasonable attorneys' fees for trial preparation, trial and appellate work. Larsen is also entitled to recover against C3 prejudgment and post-judgment interest as may be allowed by law, and costs.

V.
PRAYER FOR RELIEF

5.1 WHEREFORE, Larsen prays that Defendants be cited to appear as provided by law, and that upon final hearing that Mike Larsen Company have judgment of and from Defendants, Cueto Consulting & Construction, LLC and Aegis Security Insurance Company, jointly and severally, for the sum of \$340,415.64, plus interest, attorneys' fees, costs, expenses, and such other and further relief to which Mike Larsen Company may show itself entitled.

Respectfully submitted,

ANDREWS MYERS, P.C.

/s/ Andrew S. Harris

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